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NOTES

CALIFORNIA FINANCIAL RESPONSIBILITY LAWS— A JUDICIAL INTERPRETATION

In 1929, California enacted a financial responsibility law¹ which, in essence, requires the driver of an automobile involved in an accident to show proof of future financial responsibility. Under Vehicle Code section 414 (presently section 16431) of the financial responsibility law, proof of ability to respond in damages may be given by the written certificate of an insurance company authorized to do business within the state, certifying that a motor vehicle liability policy has been issued to the driver and is in effect. Policies offered as proof of future ability to respond in damages are subject to various regulations. Section 415 (presently section 16451) of the financial responsibility law provides that such policies must not only insure the person named therein, but any other person using or responsible for the use of the automobile with the express or implied permission of the insured. The California courts have consistently been faced with the question whether section 415 of the financial responsibility law was limited to those policies offered as proof of financial responsibility or applicable to all policies issued within the state, both certified and voluntary. The unique interpretation and application of this section by the courts will be the subject of this note. Particular emphasis will be placed upon the interpretation and application of section 415 by the judiciary as contrasted with the apparent intent of the legislature manifested by several amendments to said section. As will be seen, the California courts have not been responsive to indications from the legislature of an intent to overrule the judicial interpretation and application.

The Need For Financial Responsibility Laws

In the five year period from 1961 to 1966, deaths due to traffic accidents were sufficient to have extinguished the population of a city the size of Richmond, Virginia, or Jacksonville, Florida.² Highway injuries in the same period exceeded the population of California³ and the gloomy forecast for 1975 is that there will be over 60,000 deaths attributable to automobile accidents.⁴ These figures become

¹ Cal. Stats. 1929, ch. 258, § 4, at 560-63; Cal. Stats. 1929, ch. 259, §§ 1-2, at 563-65.

² P. KEARNY, HIGHWAY HOMICIDE 2 (1966).

³ *Id.* at 2-3.

⁴ *Id.* at 3.

even more alarming when one considers that many of the victims of these accidents, who often are completely innocent, go uncompensated for their injuries.⁵

Various types of legislation have been enacted in the United States in an attempt to solve or substantially diminish the problem of the uncompensated automobile accident victim.⁶ Public concern has demanded some means of ensuring that innocent automobile accident victims be compensated. Although there have been a number of plans proposed for compensation without regard to fault,⁷ most American jurisdictions have retained the "fault" system. Plans adhering to this system are designed to guarantee that, when fault is shown, the guilty motorist will be able to respond in damages.

Almost every state now has some type of legislation directed to the problem of the financially irresponsible motorist.⁸ Typical of such legislation is that requiring compulsory insurance⁹ or uninsured motorist coverage in insurance policies issued within the particular state.¹⁰ Unsatisfied judgment funds, which also have been established in some states,¹¹ are designed to compensate victims of the financially

⁵ It is difficult to determine the number and percentage of accidents involving uninsured motorists since most of the suits never reach the litigation stage due to the inability of the defendant to pay. Tables indicate that of the accidents reported in 1963, 88.5 percent involved insured motorists. See, e.g., CALIFORNIA ECONOMIC DEV. AGENCY, CALIFORNIA STATISTICAL ABSTRACT 1964, Table U-26, at 282 (1964).

⁶ See generally Comment, *The Financially Irresponsible Motorist: A Survey of State Legislation*, 10 VILL. L. REV. 545 (1965).

⁷ See generally Bergan, *A Thesis on Motor Vehicle Liability Without Fault*, 28 ALBANY L. REV. 199 (1964); Blum & Kalven, *Public Law Perspectives on a Private Law Problem—Auto Compensation Plans*, 31 U. CHI. L. REV. 641 (1964); Conard, *The Economic Treatment of Automobile Injuries*, 63 MICH. L. REV. 279 (1964); Keeton & O'Connell, *Basic Protection—A Proposal for Improving Automobile Claims Systems*, 78 HARV. L. REV. 329 (1964).

⁸ *Buzzone v. Hartford Accident & Indem. Co.*, 23 N.J. 447, 452, 129 A.2d 561, 564 (1957); *Laughnan v. Griffiths*, 271 Wis. 247, 255, 73 N.W.2d 587, 593 (1955). For a good discussion on the various types of plans see Comment, *The Financially Irresponsible Motorist: A Survey of State Legislation*, 10 VILL. L. REV. 545 (1965).

⁹ Massachusetts was the first state to enact a statute requiring every person registering a motor vehicle in the state to show a certificate stating that he had posted bond or deposited a sufficient amount of cash or securities with the state treasurer. Mass. Acts 1925, ch. 346, § 1, at 426, *as enacted*, MASS. GEN. LAWS ANN. ch. 90, § 34A (Supp. 1968). Massachusetts' initiative was followed by North Carolina in 1957 and New York in 1958. N.C. Sess. Laws 1957, ch. 1393, § 1, at 1586, *as enacted*, N.C. GEN. STAT. ch. 20, § 20-309 (1965); N.Y. Sess. Laws, ch. 482, § 1, at 1289-90 (1959), *as enacted*, N.Y. VEH. & TRAF. LAW, § 312 (McKinney 1960).

¹⁰ CAL. INS. CODE § 11580.2 (Supp. 1968); FLA. STAT. ANN. § 627.0851 (Supp. 1968); N.H. REV. STAT. ANN. § 268.15 (Supp. 1968); S.C. CODE § 46-750.14 (1962); VA. CODE ANN. § 38.1-381 (Supp. 1968).

¹¹ MD. ANN. CODE art. 66½, §§ 150-79 (Supp. 1967); N.J. REV. STAT.

irresponsible or unknown motorist. However, instead of adopting any of the above plans, most American jurisdictions have enacted some form of safety or financial responsibility act as the primary means of protecting and compensating the innocent automobile accident victim.¹²

Financial responsibility acts are designed to provide security for the victim of a driver's first accident through license or registration suspension until payment of any judgment recovered, and to protect the victims of subsequent accidents by requiring proof of the driver's future financial responsibility by possession of insurance or other designated means. The showing of financial responsibility is made a precondition to the continued use of the highways after a driver has been involved in an accident or held liable for damages to persons or property resulting from an accident.¹³ With few exceptions,¹⁴ the validity of such financial responsibility acts has been consistently upheld against various constitutional objections.¹⁵

It has been contended that the financial responsibility laws are superior to other statutory methods of protecting innocent automobile accident victims in that they promote careful driving, segregate the careless motorist, encourage voluntary insurance, and induce voluntary settlements out of court.¹⁶ Such laws are also said to be consistent with sound underwriting principles in that undesirable

§ 39:6-61, -91 (Supp. 1961); N.Y. INS. LAW art. 17-A, § 600 (McKinney 1966); N.D. REV. CODE § 39-17 (Supp. 1967). For an analysis and criticism of the New York act see Ward, *New York's Motor Vehicle Accident Indemnification Corporation: Past, Present and Future*, 8 BUFFALO L. REV. 215, 218 (1959). See generally Elder, *The Unsatisfied Judgment Fund and the Irresponsible Motorist*, in CURRENT TRENDS IN STATE LEGISLATION 47, 54-59 (1954).

¹² See Loiseaux, *Innocent Victims* 1959, 38 TEXAS L. REV. 154, 157 (1959), for a complete list of states. For a discussion of the background and basis for financial responsibility laws throughout the United States, see Braun, *The Financial Responsibility Law*, 3 LAW & CONTEMP. PROB. 505, 505-18 (1936).

¹³ CAL. VEHICLE CODE §§ 16020, 16080, 16370.

¹⁴ See *Rosenblum v. Griffin*, 89 N.H. 314, 197 A. 701 (1938). See also *In re Lindley*, 108 Cal. App. 258, 291 P. 638 (1930), *discredited in* *Watson v. Division of Motor Vehicles*, 212 Cal. 279, 298 P. 481 (1931). For the position that the California Financial Responsibility Law is unconstitutional see Comment, *The Constitutionality of the California Financial Responsibility Law*, 4 CAL. W.L. REV. 89 (1968).

¹⁵ Equal protection clause: *Escobedo v. Department of Motor Vehicles*, 35 Cal. 2d 870, 222 P.2d 1 (1950); *People v. O'Rourke*, 124 Cal. App. 752, 13 P.2d 989 (1932); *Doyle v. Kahl*, 242 Iowa 153, 46 N.W.2d 52 (1951). Due process clause: *Reitz v. Mealey*, 314 U.S. 33 (1941); *Sheenan v. Division of Motor Vehicles*, 140 Cal. App. 200, 35 P.2d 359 (1934); *Doyle v. Kahl*, 242 Iowa 153, 46 N.W.2d 52 (1951).

¹⁶ See generally Feinsinger, *The Operation of Financial Responsibility Laws*, 3 LAW & CONTEMP. PROB. 519 (1936); Jones, *Compulsory Automobile Liability Insurance*, ASS'N OF CAS. & SUR. EXEC. (1932); Stone, *Some Views on Compulsory Automobile Insurance*, 13 A.B.A.J. 151, 153-54 (1927).

risks are not forced upon the insurance carrier.¹⁷

The financial responsibility laws are not, however, without defects. One outstanding criticism is that they are "first bite" statutes; that is, the first injury is permitted to occur before the financial responsibility law begins to work.¹⁸ The first victim is not protected against the financially irresponsible driver who is unable to respond in damages, inasmuch as the wrongdoer merely loses his privilege to operate a motor vehicle for the statutory period. Such laws also fail to protect against hit-and-run and out-of-state drivers.¹⁹

California's Financial Responsibility Law

When the California Vehicle Code was enacted in 1935,²⁰ Division 7 encompassed the previously established financial responsibility laws (sections 400 through 416). Division 7 was modeled after Article IV of the uniform act sponsored by the National Conference on Street and Highway Safety. Under the current California Vehicle Code, sections 16000 through 16503 constitute the financial responsibility laws.²¹

Chapter 1 (sections 16000-16110) deals with "Security Following Accident" while Chapter 2 (sections 16250-16377) deals with "Suspensions Following Unsatisfied Judgment." These sections apply to accidents involving bodily injury, death or damage to property of \$100 or more. In such cases, the protection provided is that the driver of each vehicle involved must, unless he complies with specified conditions for exemption, deposit security as specified by the Department of Motor Vehicles to satisfy any final judgment or judgments rendered against him.²² Exemptions from the requirement of presenting security may be established, among other ways, by showing that the owner of the vehicle involved is a self-insurer,²³ or by satisfactory evidence that the owner had a motor vehicle liability policy or bond²⁴ complying with the statutory requirement in effect at the time of the accident.²⁵ Where the motorist fails to establish his exemption, or to provide the security required under section 16050, his privilege of driving a motor vehicle is suspended.²⁶

¹⁷ Stoeckel, *Administrative Problems of Financial Responsibility Laws*, 3 LAW & CONTEMP. PROB. 531, 534-35 (1936).

¹⁸ Loiseaux, *Innocent Victims* 1959, 38 TEXAS L. REV. 154, 157 (1959); *They Proceed on the Theory that Every Bum is Entitled to One Bump*, 56 N.Y. STATE BAR ASS'N REP. 70, 73 (1932).

¹⁹ For a general criticism of financial responsibility laws see Comment, *The Need for Revision of Financial Responsibility Legislation*, 40 ILL. L. REV. 237, 240 (1945).

²⁰ Cal. Stats. 1935, ch. 27, §§ 1-803, at 93-247.

²¹ CAL. VEHICLE CODE §§ 16000-503.

²² CAL. VEHICLE CODE § 16020.

²³ CAL. VEHICLE CODE § 16055.

²⁴ CAL. VEHICLE CODE §§ 16057-58.

²⁵ CAL. VEHICLE CODE § 16059.

²⁶ CAL. VEHICLE CODE § 16080.

Chapter 3 (sections 16430 through 16487) provides for the various means of giving proof of future ability to respond in damages when required under Chapter 1 or 2 (after suspension for over one year for failure to present security or after suspension for failure to satisfy a judgment within thirty days).²⁷ Proof of ability to respond in damages may be given by the written certificate of an insurance company authorized to do business within the state, certifying that a motor vehicle liability policy has been issued and is in effect.²⁸ It may also be given by depositing with the Department of Motor Vehicles the sum of \$25,000,²⁹ or by the written certificate of a certified self-insurer.³⁰

Restrictions as to Classes of Persons

The Initial Confrontation

As noted above, after an accident the requirement of showing ability to respond in damages may be fulfilled by a written certificate that the motorist has been issued an automobile liability insurance policy by an insurance company authorized to do business within the state.³¹ Section 414(a) of the 1955 enactment of the California Motor Vehicle Code (now section 16431) provided, in part:

Proof of ability to respond in damages may be given by the written certificate or certificates of any insurance carrier duly authorized to do business within the State, that it has issued to or for the benefit of the person named therein a motor vehicle liability policy or policies *as defined in Section 415* [now section 16450], which, at the date of said certificate or certificates is in full force and effect. . . .³²

California Vehicle Code section 415(a) (now section 16450), under the 1955 enactment of the code, provided:

A "motor vehicle liability policy" as used in this code means a policy of liability insurance issued by an insurance carrier authorized to transact such business in this State to or for the benefit of the person named therein as assured, which policy shall meet the following requirements:

....

- (2) Such policy shall insure the person named therein and any other person using or responsible for the use of said motor vehicle or motor vehicles with the express or implied permission of said assured.³³

In 1957, the Supreme Court of California was presented the question whether, in light of section 415(a) (2), an insurance company

²⁷ CAL. VEHICLE CODE §§ 16082, 16371.

²⁸ CAL. VEHICLE CODE § 16431, *formerly* Cal. Stats. 1935, ch. 27, § 414a, at 158.

²⁹ CAL. VEHICLE CODE § 16435.

³⁰ CAL. VEHICLE CODE § 16436.

³¹ CAL. VEHICLE CODE § 16431, *formerly* Cal. Stats. 1935, ch. 27, § 414a, at 158.

³² Cal. Stats. 1935, ch. 27, § 414a, at 158.

³³ Cal. Stats. 1937, ch. 840, § 5, at 2356.

authorized to do business in the state of California could, by restrictive endorsement in a policy *not* offered as proof of financial responsibility under section 414, limit coverage to the named insured and his immediate family.³⁴ More specifically, did section 415(a) (2) apply only to those policies which were offered as proof of financial responsibility or was it applicable to all automobile insurance policies, either certified or voluntary, issued or delivered in the state? Did "shall insure the person named therein and any other person using . . . said vehicle" apply only to those policies which were certified as proof of financial responsibility or did it apply to all policies issued within the state whether certified or not? The answer was enunciated in *Wildman v. Government Employees' Insurance Company*.³⁵

Wildman involved an insurance policy containing a restrictive endorsement that attempted to limit coverage to the insured and his immediate family. The restrictive clause provided:

With respect to the insurance for Bodily Injury Liability and Property Damage Liability the unqualified word "insured" includes the named insured, the individual named below, and any member of the insured's immediate family

NO EXCEPTIONS

while using the automobile or legally responsible for the use thereof, provided the actual use of the automobile is with the permission of the named insured.³⁶

At the time of the accident, in which a Mrs. Wildman was injured, the insured car was being driven by one Victoria Villanueva with the permission of the insured. Mrs. Wildman claimed that the restrictive endorsement was ambiguous and should be construed in her favor.³⁷ The insurer, Government Employees' Insurance Company, contended that the endorsement was unambiguous and provided coverage only when the automobile was being operated by the named insured or by one of his immediate family.³⁸

The court held that the endorsement was ambiguous;³⁹ that the construction proposed by the defendant insurance carrier would violate section 415;⁴⁰ and that section 415 was intended by the legislature to be, and is, a part of every policy of motor vehicle liability insurance issued by an insurance carrier authorized to do business in the state, whether that policy was entered into voluntarily by insurer and insured or was entered into for the purpose of satisfying the requirements of the Financial Responsibility Laws relative to a certifi-

³⁴ *Wildman v. Government Employees' Ins. Co.*, 48 Cal. 2d 31, 307 P.2d 359 (1957).

³⁵ *Id.*

³⁶ *Id.* at 34, 307 P.2d at 361.

³⁷ *Id.*

³⁸ *Id.* at 35, 307 P.2d at 361.

³⁹ *Id.*

⁴⁰ *Id.* at 40, 307 P.2d at 365.

cate of insurance by the insurer of a policy carried on the insured.⁴¹ In Justice Carter's words:

It appears that section 415 must be made a part of every policy of insurance issued by an insurer since the public policy of this state is to make owners of motor vehicles financially responsible to those injured by them in the operation of such vehicles. . . . [F]or an insurer to issue a policy of insurance which does not cover an accident which occurs when a person other than the insured, is driving with the permission and consent of the insured is a violation of the public policy of this state as set forth in [section] . . . 415 of the Vehicle Code.

. . . .

Inasmuch as [section] . . . 415 of the Vehicle Code set[s] forth the public policy of this state such laws must be considered a part of every policy of liability insurance even though the policy itself does not specially make such laws a part thereof.⁴²

As will be seen, the public policy enunciated in *Wildman* became the basis for later decisions holding various types of exclusionary clauses invalid as against public policy.⁴³

On the authority of *Wildman* and the public policy proclaimed therein, the California courts have held consistently that section 415 (now sections 16450 and 16451) must be read into every policy of automobile liability insurance issued or delivered within the state affording coverage on any part of the public roads and highways.⁴⁴ The courts have been loath to overturn the public policy espoused in *Wildman*, and have remained steadfast in their conviction that section 415 is not to be limited merely to those policies which are certified as proof of financial responsibility but applies to all automobile insurance policies issued or delivered within the state. In fact, the courts have shut their eyes to clear indications from the legislature of an intent to abrogate this rule of public policy.

The 1957 Amendment and Its Interpretation

Wildman was decided by the supreme court in February of 1957

⁴¹ *Id.*

⁴² *Id.* at 39, 40, 307 P.2d at 364, 364-65.

⁴³ *Exchange Cas. & Sur. Co. v. Scott*, 56 Cal. 2d 613, 364 P.2d 833, 15 Cal. Rptr. 897 (1961) (garage exclusion); *American Auto. Ins. Co. v. Republic Indem. Co.*, 52 Cal. 2d 507, 341 P.2d 675 (1959) (customer exclusion); *Wheeling v. Financial Indem. Co.*, 201 Cal. App. 2d 36, 19 Cal. Rptr. 879 (1962) (military personnel exclusion); *Royal Exch. Assurance v. Universal Underwriters Ins. Co.*, 188 Cal. App. 2d 662, 10 Cal. Rptr. 686 (1961); *Bonfils v. Pacific Auto. Ins. Co.*, 165 Cal. App. 2d 152, 331 P.2d 766 (1958) (exclusion of others than insured); *Cassin v. Financial Indem. Co.*, 160 Cal. App. 2d 631, 325 P.2d 228 (1958) (exclusion of drivers over 60 years old) (dictum).

⁴⁴ *Pacific Employers Ins. Co. v. American Mut. Liab. Ins. Co.*, 65 Cal. 2d 318, 419 P.2d 641, 54 Cal. Rptr. 385 (1966); *Uber v. Ohio Cas. Ins. Co.*, 247 Cal. App. 2d 611, 616-17, 55 Cal. Rptr. 720, 724 (1967); *General Ins. Co. v. Truck Ins. Exch.*, 242 Cal. App. 2d 419, 421-22, 51 Cal. Rptr. 462, 465 (1966); *Pacific Indem. Co. v. Universal Underwriters Ins. Co.*, 232 Cal. App. 2d 541, 543, 43 Cal. Rptr. 26, 27-28 (1965).

while the California Legislature was still in session. Before adjourning, but *after* the *Wildman* decision was handed down, the legislature amended section 415 of the California Vehicle Code as follows:

A "motor vehicle policy" as used in this chapter means an owner's policy or an operator's policy, or both, of liability insurance, *certified as provided in section 414 as proof of ability to respond in damages*, issued by an insurance carrier authorized to transact such business in this State to or for the benefit of the person named therein as assured.

.....
(b) Such owner's policy of liability insurance:

.....
(2) Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of said assured, against loss from the liability imposed by law⁴⁵

It would appear that the legislative intent behind the amendment to section 415 was to make that section dependent upon section 414. That is, a policy of liability insurance must be "certified" under section 414 in order to become a "motor vehicle liability policy" within the terms of section 415, thereby limiting the nature of the restrictions which validly could be imposed upon the scope of its coverage. Dictum in *American Automobile Insurance Company v. Republic Indemnity Company*,⁴⁶ and subsequent cases,⁴⁷ tended to support this interpretation. These cases suggested that the 1957 change in phraseology was material and indicated an intent on the part of the legislature to change the meaning of the provision, rather than merely to interpret it. In *Interinsurance Exchange v. Ohio Casualty Insurance Company*,⁴⁸ however, the Supreme Court of California, in reversing the judgment of the lower court,⁴⁹ dismissed the interpretation of cases like *American Automobile* on the ground that the public policy of the state, as enunciated by *Wildman*, was to make "owners of motor vehicles financially responsible to those injured by them in the oper-

⁴⁵ Cal. Stats. 1957, ch. 1654, § 1, at 3034 (emphasis added).

⁴⁶ 52 Cal. 2d 507, 511, 341 P.2d 675, 677 (1959).

⁴⁷ *Globe Indem. Co. v. Universal Underwriters Ins. Co.*, 201 Cal. App. 2d 9, 13-14, 20 Cal. Rptr. 73, 76 (1962); *Royal Exch. Assurance v. Universal Underwriters Ins. Co.*, 188 Cal. App. 2d 662, 667, 10 Cal. Rptr. 686, 689 (1961).

⁴⁸ 58 Cal. 2d 142, 373 P.2d 640, 23 Cal. Rptr. 592 (1962).

⁴⁹ It is of interest to note that the trial court and the district court of appeal cited *American Automobile Insurance Company v. Republic Indemnity Company* and the dictum in that case to the effect that the amendment constituted a change in the meaning of section 415 rather than merely an interpretation of the section. The district court of appeal held that the effect of the "1957 amendment . . . was to terminate as of September 11, 1957, the prior declaration of public policy and to end the requirement that permissive users be covered. This is the clear implication of the decision in *American Automobile Insurance Co. v. Republic Indem. Co.* . . . and is obvious from an analysis of the amended statute." 17 Cal. Rptr. 259, 264 (1962) (emphasis added).

ation of such vehicles.”⁵⁰ The court reasoned that to give the suggested interpretation to the 1957 amendment would have the effect of limiting the application of *Wildman* to the small number (less than 1 percent of the total) of automobile liability policies which are certified annually to the Department of Motor Vehicles.

The court went on to say that there was no “cogent and convincing evidence” which would permit it to attribute to the legislature an intent to overturn a sound rule of public policy.⁵¹ The court’s statement as to the lack of “cogent and convincing evidence” appears to be unfounded, as well as inconsistent with its own earlier statement in *American Automobile* to the effect that the 1957 amendment had made a “material change in the phraseology of the section, and such a change is ordinarily viewed as showing an intention on the part of the legislature to change the meaning of the provision rather than interpret it.”⁵² Indeed, the changes to section 415 would seem to come within the well-settled principle of statutory construction that a material change in the phraseology of a legislative enactment is viewed as showing an intent on the part of the legislature to change the meaning of the statute.⁵³

Interpretation of Similar Provisions in Other Jurisdictions

The court’s interpretation of section 415, as amended in 1957, appears even more strained when contrasted with the interpretation given similar provisions of financial responsibility laws in other jurisdictions. Although a few states require omnibus coverage (coverage as to third persons driving with the express or implied permission of the insured) by statute in all insurance policies issued in the particular state,⁵⁴ the majority of jurisdictions require such coverage only in

⁵⁰ *Wildman v. Government Employees’ Ins. Co.*, 48 Cal. 2d 31, 39, 307 P.2d 359, 364 (1957).

⁵¹ *Interinsurance Exch. v. Ohio Cas. Ins. Co.*, 58 Cal. 2d 142, 152, 373 P.2d 640, 645, 23 Cal. Rptr. 592, 597 (1962).

⁵² *American Auto. Ins. Co. v. Republic Indem. Co.*, 52 Cal. 2d 507, 511, 341 P.2d 675, 677 (1959).

⁵³ *Twin Lock, Inc. v. Superior Court*, 52 Cal. 2d 754, 761, 344 P.2d 788, 792 (1959); *People v. Valentine*, 28 Cal. 2d 121, 142, 162 P.2d 1, 14 (1946); *Loew’s Inc. v. Byram*, 11 Cal. 2d 746, 750, 82 P.2d 1, 3 (1938); *Burbank v. Metropolitan Water Dist.*, 180 Cal. App. 2d 451, 462, 4 Cal. Rptr. 757, 763 (1960).

⁵⁴ WIS. STAT. § 204.30(3) (Supp. 1968) requires omnibus coverage in automobile liability insurance policies issued or delivered in Wisconsin. See *Zippel v. Country Gardens, Inc.*, 262 Wis. 567, 55 N.W.2d 903 (1952). See also *Drewek v. Milwaukee Auto. Ins. Co.*, 207 Wis. 445, 240 N.W. 881 (1932). MASS. GEN. LAWS ANN. ch. 90, §§ 1A, 34A (1958) requires omnibus coverage in all automobile liability insurance policies issued in compliance with its compulsory insurance law. See *Service Mut. Liab. Ins. Co. v. Aronofsky*, 308 Mass. 249, 31 N.E.2d 837 (1941). See also *Dickinson v. Great Am. Indem. Co.*, 296 Mass. 368, 6 N.E.2d 439 (1937). In 1957, New Hampshire enacted N.H. Laws 1957, ch. 305:10, at 300, as enacted, N.H. REV. STAT. ANN. § 412:2-a (1968), which required that all automobile liability insurance policies issued or de-

those automobile insurance policies offered as proof of financial responsibility.⁵⁵ The financial responsibility laws of these states are similar to those of California in that they require proof of the financial responsibility of the driver of a motor vehicle who is involved in an accident and has a judgment rendered against him.⁵⁶ Policies acceptable as proof of financial responsibility are subject to extensive regulation; for example, the requirement of omnibus coverage.

The wording of the Illinois Financial Responsibility Law, for example,⁵⁷ is quite similar to the California statute as amended in 1957. It provides:

- (a) Proof of financial responsibility may be made by filing with the Secretary of State the written certificate of any insurance carrier duly authorized to do business in this State, certifying that it has issued to or for the benefit of the person . . . a motor vehicle liability policy . . . meeting the requirements of this Act

Section 7A-317 of this enactment defines a motor vehicle liability policy in language similar to that used in section 415 of the California Financial Responsibility Laws:

A "motor vehicle liability policy," as that term is used in this Act, means an "owner's policy" or an "operator's policy" of liability insurance, certified as provided in Section 7A-315 . . . as proof of financial responsibility for the future, and issued . . . by an insurance carrier duly authorized to transact business in this State, to or for the benefit of the person named therein as insured.

- (b) Such owner's policy of liability insurance:

. . . .⁵⁸

- (2) Shall insure the person named therein and any other person using or responsible for the use of said motor vehicle or vehicles with the express or implied permission of said insured⁵⁹

livered in New Hampshire contain the same coverage which was statutorily required for automobile liability insurance policies issued as proof of financial responsibility. Since policies issued as proof of financial responsibility were required to contain omnibus coverage, the net effect is that all automobile liability policies issued or delivered in the state must contain omnibus coverage.

⁵⁵ See *State Farm Mut. Auto. Ins. Co. v. Cooper*, 233 F.2d 500, 502 (4th Cir. 1956) (South Carolina); *Farm Bureau Mut. Auto. Ins. Co. v. Hammer*, 177 F.2d 793, 797-98 (4th Cir. 1959) (Virginia). See also *Duff v. Alliance Mut. Cas. Co.*, 296 F.2d 506 (10th Cir. 1961) (Oklahoma); *Hawkeye-Security Ins. Co. v. Myers*, 210 F.2d 890 (7th Cir. 1954) (Illinois); *Hoosier Cas. Co. v. Fox*, 102 F. Supp. 214 (N.D. Iowa 1952); *American Mut. Liab. Ins. Co. v. Ocean Accident Guar. Corp.*, 87 N.H. 374, 180 A. 249 (1935); *Cohen v. Metropolitan Cas. Ins. Co.*, 233 App. Div. 340, 252 N.Y.S. 841 (1931); *Anderson v. American Auto. Ins. Co.*, 50 R.I. 502, 149 A. 797 (1930); *Barkley v. International Mut. Ins. Co.*, 227 S.C. 38, 86 S.E.2d 602 (1955); *State Farm Mut. Auto. Ins. Co. v. Arghyris*, 189 Va. 913, 55 S.E.2d 16 (1949).

⁵⁶ See *Loiseau, Innocent Victims 1959*, 38 TEXAS L. REV. 154, 157 (1959), for a complete list of states and respective statutes.

⁵⁷ ILL. REV. STAT. ch. 95½, §§ 7A-101, 7A-502 (Supp. 1967).

⁵⁸ ILL. REV. STAT. ch. 95½, § 7A-315 (Supp. 1967).

⁵⁹ ILL. REV. STAT. ch. 95½, § 7A-317 (Supp. 1967).

In contrast to the California courts, however, the Illinois courts have held that a policy which is voluntary and not offered as proof of financial responsibility is not required to contain the omnibus coverage prescribed by section 7A-317.⁶⁰

Other states, including New York,⁶¹ Missouri,⁶² Iowa,⁶³ Texas,⁶⁴ Arkansas,⁶⁵ Louisiana,⁶⁶ Oklahoma,⁶⁷ Alaska,⁶⁸ and Virginia,⁶⁹ with provisions in their financial responsibility laws almost identical to sections 414 and 415 of the California Vehicle Code, have held that the omnibus coverage requirement applies only to those policies actually certified under the act as proof of ability to respond in damages.⁷⁰ Indeed, it seems to be the general rule that a voluntary policy which is not given as proof of future financial responsibility is not affected to any extent by the provisions of the financial responsibility statute.⁷¹

It should also be noted that the result reached in *Ohio Casualty* cannot be justified on the basis of a difference in the purpose underlying the California Responsibility Laws. Other jurisdictions, with

⁶⁰ *Gray v. Maryland Cas. Co.*, 152 F. Supp. 520 (E.D. Ill. 1957); *McCann v. Continental Cas. Co.*, 8 Ill. 2d 476, 134 N.E.2d 302 (1956); *Porterfield v. Truck Ins. Exch.*, 288 Ill. App. 2d 195, 171 N.E.2d 108 (1960).

⁶¹ N.Y. VEH. & TRAF. LAW § 345 (McKinney 1960).

⁶² MO. REV. STAT. § 303.190 (Supp. 1967).

⁶³ IOWA CODE § 321A.21 (1966).

⁶⁴ TEX. REV. CIV. STAT. ANN. art. 6701h, § 21 (Supp. 1967).

⁶⁵ ARK. STAT. ANN. § 75-1466 (Supp. 1967).

⁶⁶ LA. STAT. ANN. § 32:900 (1963).

⁶⁷ OKLA. STAT. tit. 47, § 7-324 (Supp. 1962).

⁶⁸ ALASKA STAT. § 28.20.440 (Supp. 1967).

⁶⁹ Virginia, in order to eliminate any question about the application of its financial responsibility law, amended its law in 1948, [1948] VA. ACTS ch. 201, § 14-A, at 438 as follows: "It is provided however that the provisions of this act shall not apply to any policy of insurance except as to liability thereunder incurred after certification thereof as proof of financial responsibility."

⁷⁰ *Jones v. Mid-South Ins. Co.*, 358 F.2d 887 (5th Cir. 1966) (Louisiana); *Farm Bureau Mut. Auto. Ins. Co. v. Hammer*, 177 F.2d 793 (4th Cir. 1949) (Virginia); *Gray v. Maryland Cas. Co.*, 152 F. Supp. 520 (E.D. Ill. 1957); *Hoosier Cas. Co. v. Fox*, 102 F. Supp. 214 (N.D. Iowa 1952); *Hart v. National Indem. Co.*, 422 P.2d 1015 (Alas. 1967); *Perkins v. Perkins*, 284 S.W.2d 603 (Mo. 1955); *Selected Risks Ins. Co. v. Zullo*, 48 N.J. 362, 225 A.2d 570 (1966); *Buzzone v. Hartford Accident & Indem. Co.*, 41 N.J. 511, 125 A.2d 551 (1956); *Western Alliance Ins. Co. v. Albarez*, 380 S.W.2d 710 (Tex. Civ. App. 1964); *McCarthy v. Insurance Co. of Texas*, 271 S.W.2d 836 (Tex. Civ. App. 1954).

⁷¹ *Duff v. Alliance Mut. Cas. Co.*, 296 F.2d 506 (10th Cir. 1961); *State Farm Mut. Auto. Ins. Co. v. Cooper*, 233 F.2d 500 (4th Cir. 1956); *Hawkeye-Security Ins. Co. v. Myers*, 210 F.2d 890 (7th Cir. 1954); *Farm Bureau Mut. Auto. Ins. Co. v. Hammer*, 177 F.2d 793 (4th Cir. 1949); *M.F.A. Mut. Ins. Co. v. Mullin*, 156 F. Supp. 445 (W.D. Ark. 1957); *State Auto. Ins. Ass'n v. Kooiman*, 143 F. Supp. 614 (D.S.D. 1956); *Hoosier Cas. Co. v. Fox*, 102 F. Supp. 214 (N.D. Iowa 1952).

similar statutes, have expressed a purpose similar to that expressed in *Wildman* and *Ohio Casualty*, but have not extended the implementation of that public policy to the case of voluntary insurance.⁷²

Recodification

Section 415 was amended again in 1959 while being recodified by the legislature.⁷³ Subparagraphs (a), (b), and (c) were changed into separate sections encompassing sections 16450, 16451, and 16452 respectively. In addition, the opening word of each paragraph was changed from "Such" to "An." Considering the handling of the 1957 Amendment by the courts, it was no surprise that these changes were insufficient to overturn *Wildman*, and, in fact, failed to evoke new judicial expressions.

Restrictions as to Named Persons

Bohrn v. State Farm Mutual Automobile Insurance Company

Following the rule set down in *Wildman* and reiterated in *Ohio Casualty*, the courts have held several types of exclusionary clauses invalid as contravening public policy. These have included a garage exclusion,⁷⁴ a customer exclusion,⁷⁵ a driver over 60 years old exclusion,⁷⁶ and "others" than the insured exclusion,⁷⁷ and a military personnel exclusion.⁷⁸ However, not until *Bohrn v. State Farm Mutual Automobile Insurance Company*⁷⁹ was the court asked to determine the validity of such a restrictive endorsement excluding a

⁷² See, e.g., *Gonzales v. Department of Public Safety*, 340 S.W.2d 860, 863-64 (Tex. Civ. App. 1960); "The purpose and intent of the Legislature in enacting the Texas Safety Responsibility Law was to promote safe driving practices among all owners and operators of motor vehicles . . . and to require such owners and operators to discharge their financial responsibility to others for damage to persons or property occasioned by the exercise, by such owner or operator, of the privilege or license of using the public highways of this State." *Id.* at 863-64. See also *Jones v. Mid-South Ins. Co.*, 358 F.2d 887, 888 (5th Cir. 1966); *Hays v. Country Mut. Ins. Co.*, 28 Ill. 2d 601, 605-09, 192 N.E.2d 855, 858-59 (1963).

⁷³ Cal. Stats. 1959, ch. 3, § 16451, at 1649.

⁷⁴ *Exchange Cas. & Sur. Co. v. Scott*, 56 Cal. 2d 613, 364 P.2d 833, 15 Cal. Rptr. 897 (1961); *Clark v. Universal Underwriters Ins. Co.*, 233 Cal. App. 2d 746, 43 Cal. Rptr. 822 (1965); *Royal Exch. Assur. v. Universal Underwriters Ins. Co.*, 188 Cal. App. 2d 662, 10 Cal. Rptr. 686 (1961).

⁷⁵ *American Auto. Ins. Co. v. Republic Indem. Co.*, 52 Cal. 2d 507, 341 P.2d 675 (1959).

⁷⁶ *Cassin v. Financial Indem. Co.*, 160 Cal. App. 2d 631, 325 P.2d 228 (1958) (dictum).

⁷⁷ *Bonfils v. Pacific Auto. Ins. Co.*, 165 Cal. App. 2d 152, 331 P.2d 766 (1958).

⁷⁸ *Wheeling v. Financial Indem. Co.*, 201 Cal. App. 2d 36, 19 Cal. Rptr. 879 (1962).

⁷⁹ 226 Cal. App. 2d 497, 38 Cal. Rptr. 77 (1964).

specifically named individual.

Billy Bohrn, while driving his father's 1955 Dodge, struck and injured a pedestrian. Billy's father had a policy with State Farm Mutual Automobile Insurance Company which contained the following restrictive endorsement:

[I]t is agreed that the Company shall not be liable and no liability or obligation of any kind shall attach to the Company for losses or damage sustained while any automobile insured hereunder is driven or operated by Bill A. Bohrn except when accompanied by the named insured or the named insured's spouse.⁸⁰

At the time of the accident, Billy was alone, but was driving with his father's express permission. An action was commenced by the injured pedestrian against both Billy and his father. When State Farm refused to defend in that action, Bohrn brought an action for declaratory relief. The trial court held the exclusionary clause to be null and void as against public policy. State Farm appealed on the grounds that the bar to restrictive endorsements, as enunciated by *Wildman*, applied only to classes of permissive users and not to named individuals;⁸¹ and that section 11580.1(e), which had just recently been added to the Insurance Code,⁸² allowed such a named exclusion.⁸³

State Farm's first contention was based on a statement of the opinion rendered in *Ohio Casualty* that "[a]ny provision in a policy which purported to exclude *certain classes* of permissive users from coverage was declared to be contrary to this public policy and, therefore, void."⁸⁴ The court held the clause in the State Farm policy invalid as against public policy and found that State Farm's interpretation was unwarranted, untenable, and contrary to the rule of liberal construction given the entire automobile responsibility laws. Further, the court indicated that by their reading of *Wildman*, no language could be found in that decision which supported State Farm's contention. The court went on to say that "the Supreme Court made it abundantly clear that the omnibus coverage of permissive drivers was truly total, and that considerations of public policy brooked no exceptions."⁸⁵

As to section 11580.1, which was added to the Insurance Code during the session of the legislature following the *Ohio Casualty* decision, the court refused to apply it or consider its effect, based on

⁸⁰ *Id.* at 499, 38 Cal. Rptr. at 78.

⁸¹ *Id.* at 502, 38 Cal. Rptr. at 80-81.

⁸² Cal. Stats. 1963, ch. 1259, § 1, at 2780.

⁸³ *Bohrn v. State Farm Mut. Auto. Ins. Co.*, 226 Cal. App. 2d 497, 500, 38 Cal. Rptr. 77, 78 (1964).

⁸⁴ *Interinsurance Exchange v. Ohio Cas. Co.*, 58 Cal. 2d 142, 150, 373 P.2d 640, 644, 23 Cal. Rptr. 592, 596 (1962) (emphasis added). It is interesting to note that this identical language was again employed in a subsequent case. *Travelers Indem. Co. v. Transport Indem. Co.*, 242 Cal. App. 2d 227, 233, 51 Cal. Rptr. 724, 727 (1966).

⁸⁵ *Bohrn v. State Farm Mut. Auto. Ins. Co.*, 226 Cal. App. 2d 497, 502, 38 Cal. Rptr. 724, 727 (1964).

the fact that it had been enacted after the policy was issued to Bohrn and could not be given a retroactive effect.⁸⁶

1963 Amendments

As mentioned above, after the *Ohio Casualty* decision was handed down by the Supreme Court of California, the legislature, *at its next session*, added section 11580.1⁸⁷ to the Insurance Code. At the same time, and *by the same act*, sections 16450⁸⁸ and 16057⁸⁹ of the Vehicle Code were amended.

Section 16450 of the California Vehicle Code was amended to read:

A "motor vehicle liability policy," as used in Chapters 2, 3, and 4 of this division, means an owner's policy or an operator's policy, or both, of liability insurance, certified as provided in Section 16431 as proof of ability to respond in damages, issued by an insurance carrier authorized to transact such business in this State to or for the benefit of the person named therein as assured. *Any requirements set forth in said Chapters 2, 3, and 4 relating to a motor vehicle liability policy shall apply only to those policies which have been certified as proof of ability to respond in damages as provided in Section 16431.*⁹⁰

Section 16057 of the Vehicle Code, as amended, provided that in order to establish an exemption from the "security following accident" provisions of the financial responsibility laws, the terms of a policy were required to comport with the requirements of sections 11580, 11580.1, and 11580.2 of the Insurance Code and section 16059 of the Vehicle Code, "*but need not contain provisions other than those required by said sections.*"⁹¹ Note that no reference was made to sections 16450 or 16451 of the Vehicle Code.

Section 11580.1, which was added to the Insurance Code, provided:

No policy of liability insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle shall be issued or delivered in this State to the owner of a motor vehicle . . . unless it contains the following provisions:

-
- (d) Provision insuring the named therein and to the same extent that coverage is afforded such named insured in respect to said described motor vehicles, any other person using, or legally responsible for the use of, said motor vehicles, provided the motor vehicles are being used by the named insured or with his permission, express or implied.
 - (e) *Notwithstanding the foregoing subdivisions, the insurer and any named insured may, by the terms of such policy or by a separate writing, agree that coverage under the policy shall not apply while said motor vehicles are being used by a natural*

⁸⁶ *Id.* at 505, 38 Cal. Rptr. at 81.

⁸⁷ Cal. Stats. 1963, ch. 1259, § 1, at 2780.

⁸⁸ Cal. Stats. 1963, ch. 1259, § 3, at 2781.

⁸⁹ Cal. Stats. 1963, ch. 1259, § 2, at 2781.

⁹⁰ Cal. Stats. 1963, ch. 1259, § 3, at 2781 (emphasis added).

⁹¹ Cal. Stats. 1963, ch. 1259, § 2, at 2781 (emphasis added).

person or persons designated by name. Such agreement by any named insured shall be binding upon every insured to whom such policy applies.⁹²

What was the effect of these changes? The draftsmen and sponsors of the 1963 amending act felt that the legislature, by clear and unequivocal language, had changed, at least to some extent, the rule announced by the supreme court in *Wildman* and *Ohio Casualty*.⁹³ It appeared that the legislature had modified *Wildman* by making statutory the state's public policy with respect to the required content or scope of coverage of automobile liability insurance policies which are not certified according to section 16431 of the Vehicle Code and by specifically manifesting an intent that voluntary policies be governed *exclusively* by Vehicle Code section 16059 and sections 11580, 11580.1 and 11580.2 of the Insurance Code. This, of course, would have the ancillary effect of limiting the application of section 16451 solely to those policies which had been certified as proof of ability to respond in damages. The rewording of section 16450 to the effect that it and section 16451 "shall apply only to those policies which have been certified as proof of ability to respond in damages"⁹⁴ definitely indicates an intention on the part of the legislature to so limit 16451 to certified policies. For what other purpose could the legislature have added 11580.1(d) which requires basically the same omnibus coverage as the supreme court interpreted section 16451 to require in *Wildman* and *Ohio Casualty*?

Vehicle Code section 16057, as amended, is also indicative of legislative intent to limit section 16451 to certified policies. Section 16057 relates to voluntary policies and the legislature specifically declared that such policies "need not contain provisions other than those required by" section 16059 of the Vehicle Code and sections 11580, 11580.1 and 11580.2 of the Insurance Code.⁹⁵ No mention was made of either section 16450 or section 16451 of the Vehicle Code.

As to voluntary policies, by this interpretation section 11580.1 of the Insurance Code would have the effect of preventing broad exclusionary clauses while preserving the right of the insurer and the insured to exclude coverage as to any named individual or individuals who might be bad risks. Section 16451 (formerly 415) of the Vehicle Code would be limited to policies offered as proof of financial responsibility and would prevent any exclusion as to permittee drivers in such policies, whether specifically named or not. The effect of this legislation, if so interpreted, would have been to return the law to a status similar, but not identical, to that which existed prior to *Wildman*. That is, it is possible that the legislature was attempting to implement part of the public policy enunciated in *Wildman* insofar

⁹² Cal. Stats. 1963, ch. 1259, § 1, at 2780 (emphasis added).

⁹³ Address by John R. Maloney, Pacific Claim Executives Association Meeting, April 26, 1968, on file in Hastings Law Library.

⁹⁴ Cal. Stats. 1963, ch. 1259, § 3, at 2781.

⁹⁵ Cal. Stats. 1963, ch. 1259, § 2, at 2781.

as prohibiting general exclusionary clauses in voluntary policies while allowing the insurance companies the right to insure and select their own risks to the extent of declining exposure to known dangerous risks. However, the California courts have given the amendments no such interpretation.

Abbott v. Interinsurance Exchange⁹⁶

The 1963 legislative act which added section 11580.1 to the Insurance Code and amended sections 16450 and 16057 of the Vehicle Code was tested in *Abbott v. Interinsurance Exchange*, decided by the Fifth District Court of Appeal in 1968. H.J. Abbott and his wife were issued an automobile insurance policy by Interinsurance Exchange of the Automobile Club of Southern California insuring them against claims made by other persons for damage caused in the operation of their automobile. Their son, Barry, had a bad driving record, and to avoid a higher rate, his parents signed an endorsement which excluded coverage while Barry was driving the car in question. Barry, driving with his parents' permission, collided with another vehicle operated by one Batchelder. An action was brought against the Abbotts, who requested Interinsurance to defend in the action. Interinsurance declined to defend, claiming that the policy was not effective due to the exclusionary clause.⁹⁷ Abbott sued for declaratory relief. The appellate court affirmed the trial court's holding that the public policy of California, as expressed in section 16451 of the Vehicle Code and announced in *Wildman*, still required insurance policies issued within the state to apply to injuries suffered by third parties at the hands of negligent permittee drivers of the insured car. The court stated that while section 11580.1(e) of the Insurance Code allowed insurer and the insured by contract to restrict coverage as between themselves, section 11580.1 did not change the law as established by Vehicle Code section 16451 when innocent third parties were involved. Thus, the insurance company was obligated, as to innocent third parties, to satisfy any judgment or judgments rendered against the insured.⁹⁸

Interinsurance Exchange had contended that the legislature, by adopting section 11580.1 of the Insurance Code, changed the public policy of the state with respect to protecting innocent third parties, and that the wording of section 16450, as amended in 1963, conformed with the provisions of section 11580.1 of the Insurance Code to effect the above change in public policy as to "noncertified policies."⁹⁹ As to section 16450, the court rejected Interinsurance Exchange's interpretation. The court was of the opinion that the purpose of the 1963 amendment (which provided that any requirement set forth in

⁹⁶ 260 A.C.A. 546, 67 Cal. Rptr. 220 (1968).

⁹⁷ *Id.* at 548, 67 Cal. Rptr. at 221.

⁹⁸ *Id.* at 549, 67 Cal. Rptr. at 221-22.

⁹⁹ *Id.* at 554, 67 Cal. Rptr. at 225.

Chapters 2, 3, and 4 of the Financial Responsibility Laws applied only to those policies which had been certified) was merely to

refer to one means of proof of the ability of the owner of a car to respond in damages and . . . that it was not the intention of the Legislature, in such a furtive way, to abrogate the public policy of this state as it is expressed in section 16451 of the Vehicle Code and an unbroken line of specific court decisions."¹⁰⁰

The court also rejected Interinsurance Exchange's contention that section 11580.1(e) of the Insurance Code allowed an insurer and an insured to exclude coverage while a named individual was driving so as to effectively prevent an innocent third party, injured by the excluded permittee-driver, from recovering against the insurance company. The court relied on the *Wildman* determination that the public policy behind section 16451 was to protect the innocent victim. This public policy requires that section 16451 must be made a part of every automobile liability insurance policy and that such exclusionary clauses must necessarily be invalid with respect to third parties.¹⁰¹

It would appear that the public policy rule of *Wildman* was preserved by the court's interpretation of section 11580.1 of the Insurance Code. Thus, as between an insurer and an insured, a named-driver exclusion is valid and enforceable and an insurer is entitled to be indemnified by the insured for any amount which it might be compelled to pay on a judgment recovered by an injured third party claimant where the excluded person was driving the automobile. But as to the innocent third party, such a named driver exclusion is unenforceable as contrary to public policy. The burden is put upon the insurance company to recover from the insured any amount paid to such "innocent" third party claimants, and if the insured is otherwise "irresponsible," the insurance company, rather than the third party, suffers the loss.

The opinion of the court contains no indication that it was aware of the fact that the 1963 amendment to section 16450 of the Vehicle Code was part of the *same legislative act* which added section 11580.1 to the Insurance Code. The fact that these changes were accomplished in one legislative act would seem to lend support to the argument, previously advanced, that there was an intent on the part of the legislature to modify the rule of public policy established by *Wildman*. It is also interesting to note that there is no evidence on the face of the opinion that the court realized that Vehicle Code section 16057 was also amended by the same legislative act. In fact, the opinion is devoid of comment as to the effect or significance of the amendment to section 16057.

Conclusion

The legislature, in the recent 1968 session, has responded to *Abbott* by amending section 11580.1 of the Insurance Code and sections

¹⁰⁰ *Id.* at 555, 67 Cal. Rptr. at 226.

¹⁰¹ *Id.* at 549, 67 Cal. Rptr. at 222.

16451 and 16057 of the Vehicle Code, again by a single legislative act.¹⁰² The amendments to these sections have been approved, were signed by the Governor, and became effective 60 days after the legislature adjourned.¹⁰³ The amending language indicates, even more clearly than did the 1963 Amendment, a legislative intent to overturn *Wildman*.

Section 11580.1(e) of the Insurance Code was amended to provide:

- (e) Notwithstanding the foregoing subdivision or the provisions of article 2 (commencing with Section 16450), Chapter 3, Division 7 of the Vehicle Code, the insurer and any named insured may, by the terms of such policy or by a separate writing, agree that coverage under the policy shall not apply, nor accrue to the benefit of the insured or any third party claimant, while said motor vehicles are being used by a natural person or persons designated by name. Such agreement by any named insured shall be binding upon every insured to whom such policy applies and upon every third party claimant.¹⁰⁴

Sections 16451 and 16057 of the Vehicle Code were not changed substantially.¹⁰⁵ As amended, section 11580.1 leaves little doubt of a legislative intent to overturn the public policy pronounced by *Wildman*, at least to the extent of permitting exclusionary clauses as to named individuals. Just how the California courts will interpret this new amendment, however, cannot be determined.

Although one can appreciate and approve the laudable objectives of section 16451 as enunciated by *Wildman* under the term "public policy," the court should nevertheless confine itself to the specific means prescribed by the legislature for achieving this goal. No general statement of court-made public policy should override or add to the plain and unequivocal provisions of an act. Even though the public policy enunciated by the Supreme Court of California in *Wildman* may be desirable, or perhaps should be the primary policy, the fact remains that it is the function of the legislature, and not the courts, to determine the public policy of the state.

The protection of innocent victims of automobile accidents is only one of many competing policies which the legislature considered when enacting the 1957, 1963 and 1968 legislation. Other factors, such as the sound underwriting principle that an insurance carrier should be able to select and determine its own risks and not be forced to expose itself to known dangerous risks, and the freedom to contract which allows insurer and insured to write the type of policy they desire and to limit its coverage by plain language, are equally valid considerations of public policy. It is hoped that the California courts will

¹⁰² Cal. Stats. 1968, ch. 1314, § 2, at 2402.

¹⁰³ Since the legislature adjourned on September 13, 1968, the amendments to section 11580.1 of the Insurance Code and sections 16451 and 16057 of the Vehicle Code became effective on November 13, 1968.

¹⁰⁴ Cal. Stats. 1968, ch. 1314, § 1, at 2402-03.

¹⁰⁵ Cal. Stats. 1968, ch. 1314, §§ 3-4, at 2404.

now give effect to the clear legislative intent expressed in the 1968 amendment to section 11580.1.

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